

## COMPLAINT

Defendant.

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3. This court has jurisdiction to hear this claim pursuant to 28 U.S.C. §1331 in that the claim arises under the laws of the United States. Specifically, Plaintiff brings this action to enforce his rights under ERISA as allowed by 29 U.S.C. §1132.

4. Venue in the Middle District of North Carolina is appropriate by virtue of The Charlotte-Mecklenburg Hospital Authority dba Atrium doing business in this district.

#### FACTUAL ALLEGATIONS

5. At all times relevant to this action, Plaintiff has been a covered beneficiary under a group LTD benefits policy issued by Hartford Life and Accident Insurance Company through his former employer, The Charlotte-Mecklenburg Hospital Authority dba Atrium.

6. Under the terms of the policy, Hartford Life and Accident Insurance Company administered the Plan and had authority to grant or deny benefits to applicants.

7. Defendant, Hartford Life and Accident Insurance Company, has a fiduciary obligation to Plaintiff to administer the Plan and policy fairly and to furnish long term disability benefits according to the terms of the policy, subject to conditions and limitations not applicable to this action.

8. Plaintiff is a fifty-nine year old male who worked for The Charlotte-Mecklenburg Hospital Authority dba Atrium as an x-ray equipment technician beginning September 15, 2016. As of September 13, 2017, the combined effect of Plaintiff's impairments made him incapable of performing any substantial work activity on a sustained basis, i.e., 8 hours per day, 40 hours per week. He thereafter applied to Hartford Life and Accident Insurance Company for long term disability benefits which were denied based on allegation of a pre-existing condition on June 13, 2018, based on wrongful application of the pre-existing condition limitation of the policy. A timely appeal was filed including supplemental information establishing that the preexisting condition provision of the Plan were inapplicable to the claim; however, an appeal was issued on November 19, 2018. Defendant denied the Plaintiff's final appeal, thus exhausting his administrative remedies.

9. Plaintiff submitted medical information to Defendant conclusively establishing a covered disability from Andrew T. Healy, M.D., his Board certified treating neurosurgeon, along with affidavit testimony from Plaintiff. Defendant breached its fiduciary duty under the Plan and wrongfully denied Plaintiff's request for LTD benefits.

10. Plaintiff has now exhausted his administrative remedies, and his claim is ripe for judicial review pursuant to 29 U.S.C. § 1132.

WRONGFUL DENIAL OF BENEFITS  
UNDER ERISA, 29 U.S.C. §1132 FOR THE FOLLOWING REASONS:

11. Defendants have wrongfully denied LTD benefits to Plaintiff in violation of the Plan provisions and ERISA for the following reasons:

- a. Plaintiff is totally disabled, in that he cannot perform the material duties of his own occupation, and he cannot perform the material duties of any other occupation which his education, training or experience would reasonably allow;
- b. Defendant failed to accord proper weight to the evidence in the administrative record showing that Plaintiff is totally disabled;
- c. Defendant's interpretation of the definition of disability contained in the policy is contrary to plain language of the policy, unreasonable, arbitrary and capricious; and
- d. Defendant improperly interpreted the provisions of the Plan and violated its contractual obligation to furnish long term disability benefits to Plaintiff.
- e. Defendant wrongfully relied upon the pre-existing exclusion of the Plan to deny long term disability benefits to Plaintiff.

WHEREFORE, Plaintiff prays the Court:

1. Grant Plaintiff declaratory and injunctive relief, finding that he is entitled to long term disability benefits under the terms of the Plan.
2. Enter an order awarding Plaintiff all reasonable attorney fees and expenses incurred as a result of Defendants' wrongful denial in providing coverage.
3. Enter an award for such other relief as may be just and appropriate.

Dated this 10th day of January, 2019.

s/ Robert A. Whitlow  
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